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the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of \$300,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which:

(1) The claim of the United States for such care and treatment has been referred to the Department of Justice; or

(2) A suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described in § 43.1 and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving:

(1) Unusual circumstances;

(2) A new point of law which may serve as a precedent; or

(3) A policy question where there is or may be a difference of views between any of such Departments and Agencies.

[Order No. 1594-92, 57 FR 27356, June 19, 1992, as amended by Order No. 3141-2010, 75 FR 9103, Mar. 1, 2010]

§ 43.4 Annual reports.

The head of each Department or Agency concerned, or his designee, shall report annually to the Attorney General, by March 1, commencing in 1964, the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third persons.

[Order No. 289-62, 27 FR 11317, Nov. 16, 1962]

PART 44—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

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AUTHORITY: 8 U.S.C. 1324b, 8 U.S.C. 1103(a).

SOURCE: Order No. 1225-87, 52 FR 37409, Oct. 6, 1987, unless otherwise noted.

Subpart A—General

§ 44.100 Purpose.

The purpose of this part is to effectuate section 102 of the Immigration Reform and Control Act of 1986, which prohibits certain unfair immigration-related employment practices.

§ 44.101 Definitions.

(a) *Charge* means a written statement under oath or affirmation that—

(1) Identifies the charging party's name, address, and telephone number;

(2) Identifies the injured party's name, address, and telephone number, if the charging party is not the injured party;

(3) Identifies the name and address of the person or entity against whom the charge is being made;

(4) Includes a statement sufficient to describe the circumstances, place, and date of an alleged unfair immigration-related employment practice;

(5) Indicates whether the basis of the alleged unfair immigration-related employment practice is discrimination based on national origin, citizenship status, or both; or intimidation or retaliation, or documentation abuses;

(6) Indicates whether the injured party is a U.S. citizen, U.S. national, or alien authorized to work in the United States;

(7) Indicates, if the injured party is an alien authorized to work, whether the injured party—

(i) Has been—

(A) Lawfully admitted for permanent residence;

(B) Granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a), 8 U.S.C. 1161(a), or 8 U.S.C. 1255a(a)(1);

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(C) Admitted as a refugee under 8 U.S.C. 1157; or

(D) Granted asylum under 8 U.S.C. 1158; and

(ii) Has applied for naturalization (and if so, indicates the date of the application);

(8) Identifies, if the injured party is an alien authorized to work, the injured party's alien registration number and date of birth.

(9) Indicates, if possible, the number of persons employed on the date of the alleged discrimination by the person or entity against whom the charge is being made;

(10) Is signed by the charging party and, if the charging party is neither the injured party nor an officer of the Immigration and Naturalization Service, indicates that the charging party has the authorization of the injured party to file the charge.

(11) Indicates whether a charge based on the same set of facts has been filed with the Equal Employment Opportunity Commission, and if so, the specific office, and contact person (if known); and

(12) Authorizes the Special Counsel to reveal the identity of the injured or charging party when necessary to carry out the purposes of this part.

(b) *Charging party* means—

(1) An individual who files a charge with the Special Counsel that alleges that he or she has been adversely affected directly by an unfair immigration-related employment practice;

(2) An individual or private organization who is authorized by an individual to file a charge with the Special Counsel that alleges that the individual has been adversely affected directly by an unfair immigration-related employment practice; or

(3) An officer of the Immigration and Naturalization Service who files a charge with the Special Counsel that alleges that an unfair immigration-related employment practice has occurred.

(c) *Protected individual* means an individual who—

(1) Is a citizen or national of the United States; or

(2) Is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted

for temporary residence under 8 U.S.C. 1160(a), 8 U.S.C. 1161(a), or 8 U.S.C. 1255a(a)(1), is admitted as a refugee under 8 U.S.C. 1157, or is granted asylum under 8 U.S.C. 1158. The status of an alien whose application for temporary resident status under 8 U.S.C. 1160(a), 8 U.S.C. 1161(a), or 8 U.S.C. 1255a(a)(1) is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Immigration and Naturalization Service Legalization Office. As used in this definition, the term “protected individual” does not include an alien who—

(i) Fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, by May 6, 1987; or

(ii) Has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless the alien can establish that he or she is actively pursuing naturalization, except that time consumed in the Immigration and Naturalization Service's processing of the application shall not be counted toward the two-year period.

(d) *Complaint* means a written submission filed with an administrative law judge by the Special Counsel or the charging party, other than an officer of the Immigration and Naturalization Service, that is based on the same charge filed with the Special Counsel.

(e) *Injured party* means a person who claims to have been adversely affected directly by an unfair immigration-related employment practice or, in the case of a charge filed by an officer of the Immigration and Naturalization Service or by a charging party other than the injured party, is alleged to be so affected.

(f) *Respondent* means a person or entity against whom a charge of an unfair immigration-related employment practice has been filed.

(g) *Special Counsel* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 102 of

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the Immigration Reform and Control Act of 1986, or his or her designee.

[Order No. 1225–87, 52 FR 37409, Oct. 6, 1987, as amended by Order No. 1520–91, 56 FR 40249, Aug. 14, 1991; Order No. 1807–93, 58 FR 59948, Nov. 12, 1993]

Subpart B—Prohibited Practices

§ 44.200 Unfair immigration-related employment practices.

(a)(1) *General.* It is unfair immigration-related employment practice for a person or other entity to knowingly and intentionally discriminate or to engage in a pattern or practice of knowing and intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(i) Because of such individual's national origin; or

(ii) In the case of a protected individual, as defined in § 44.101(c), because of such individual's citizenship status.

(2) *Intimidation or retaliation.* It is an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. 1324b or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that section.

(3) *Documentation abuses.* A person's or other entity's request, for purposes of satisfying the requirements of 8 U.S.C. 1324a(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.

(b) *Exceptions.* (1) Paragraph (a) of this section shall not apply to—

(i) A person or other entity that employs three or fewer employees;

(ii) Discrimination because of an individual's national origin if the dis-

crimination with respect to that person or entity and that individual is covered under 42 U.S.C. 2000e–2; or

(iii) Discrimination because of citizenship which—

(A) Is otherwise required in order to comply with law, regulation, or Executive Order; or

(B) Is required by Federal, State, or local government contract; or

(C) Which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(2) Notwithstanding any other provision of this part, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit or refer for a fee an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

[Order No. 1225–87, 52 FR 37409, Oct. 6, 1987, as amended by Order No. 1520–91, 56 FR 40249, Aug. 14, 1991; Order No. 1807–93, 58 FR 59948, Nov. 12, 1993]

Subpart C—Enforcement Procedures

§ 44.300 Filing a charge.

(a) *Who may file.* (1) Any individual who believes that he or she has been adversely affected directly by an unfair immigration-related employment practice, or any individual or private organization authorized to act on such person's behalf, may file a charge with the Special Counsel.

(2) Any officer of the Immigration and Naturalization Service who believes that an unfair immigration-related employment practice has occurred or is occurring may file a charge with the Special Counsel.

(b) *When to file.* Charges shall be filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice. For purposes of determining when a charge is timely under this paragraph, a charge mailed to the Special Counsel shall be deemed filed on the date it is postmarked.

(c) *How to file.* Charges may be:

(1) Mailed to: Office of Special Counsel for Immigration-Related Unfair